LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of The United States

October Term, 1963

No. 281

SAM BASS, *Petitioner*,

versus

THE STATE OF SOUTH CAROLINA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

JOHN BOLT CULBERTSON
Greenville, South Carolina
Attorney for Petitioner

INDEX

	Page
Citation to Opinion Below	1
Jurisdiction	1
Questions Involved	2
Constitutional Provisions Involved	2
Statement	3
Reasons for Granting the Writ	3
Appendix	
(a) Opinion Below	A-1
(b) Petition for Re Hearing	A-5
(c) Order Denying Petition	A-8

TABLE OF CITATIONS

	Page
STATUTES, etc:	
United States Code	
Title 28, Section 1257 (3)	1
United States Constitution	
Fourth Amendment	2, 3, 4, 5
Sixth Amendment	2, 3, 4
Fourteenth Amendment	2, 3, 4
Constitution of South Carolina (1895)	
Article 1, Section 16	4

IN THE

Supreme Court of The United States

SAM BASS, *Petitioner*,

STATE OF SOUTH CAROLINA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioner prays that a Writ of Certiorari issue to review the judgement of the Supreme Court of South Carolina entered on April 1, 1963.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of South Carolina was issued on April 1, 1963 and will be reported and found in Southeastern Reporter (Second), and South Carolina Reports. It is attached hereto.

JURISDICTION

The judgement of the Court of General Sessions for Marlboro County, South Carolina was affirmed by the Supreme Court of South Carolina on April 1, 1963 and Petition for Re Hearing having been denied, the Remittitur was handed down on April 19, 1963 and became the final judgement of this Court. An Order granting stay of sentence for the purpose of applying to the Supreme Court of the United States for a Writ of Certiorari was signed by South Carolina Supreme Court Chief Justice C. A. Taylor on April 23, 1963.

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of 28 U. S. C., Section

1257 (3). Petitioner having asserted in the Court below rights, privileges, and immunities conferred by the Constitution of the United States.

QUESTIONS INVOLVED

I

The first question is whether due process of law and the right to a trial by an impartial jury, as guaranteed by the VI and XIV Amendments to the United States Constitution, was denied the Petitioner, a Negro accused of receiving stolen goods.

II

The second question is whether the Defendant was subjected to an unreasonable search in violation of the IV Amendment to the Constitution of the United States when a Federal search warrant was used to obtain evidence against him in the State Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner contends that he has been denied his right and protection of the Sixth Amendment to the Constitution of the United States which guarantees that:

> "the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

Petitioner likewise contends that he has been denied his right and protection of the Fourteenth Amendment to the Constitution of the United States which prohibits the several states:

> "No state shall make or enforce any laws which shall abridge the privileges or immunities of the citizens of the United States; nor shall deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Petitioner contends that he has been denied his right and protection of the Fourth Amendment to the Constitution of the United States which guarantees his right against unreasonable search and seizure.

STATEMENT

The Defendant was indicted in Marlboro County for Receiving Stolen Goods of the value of more than twenty ($20.00) Dollars. The indictment was in the usual form. The defendant plead not guilty. The matter came on for trial at the July 1962 Term of the Court of General Sessions for Marlboro County, South Carolina; the jury returned a verdict of guilty. The sentence of the Court was that the Defendant be confined for a period of thirty (30) months at hard labor upon the public works of Marlboro County or for a like period in the State Penitentiary.

In due time an appeal was taken and argued before the South Carolina Supreme Court. By its opinion dated April 1, 1963, the judgement of the lower Court was affirmed. A Petition for Re Hearing was duly filed and, by Order of the Court dated April 19, 1963 this Petition was denied. By Order dated April 23, 1963 the sentence in this case was stayed pending application to this Court for a Writ of Certiorari.

It was argued before the Court that Negroes were purposefully and systematically excluded from jury duty in Marlboro County.

It developed during the testimony that the officers had seized certain evidence used in the case by authority of a Federal search warrant which specified illegal whiskey. It was argued that such use by a Federal Search Warrant was in violation of the Constitutional rights of the Defendant.

REASONS FOR GRANTING THE WRIT

It is well established that the planned, purposeful or systematic exclusion of any class or race from the grand or petit jury denies to the Defendant a fair and impartial trial and the equal protection of the law guaranteed not only by the State Constitution but by the Sixth and Fourteenth Amend-

ments to the United States Constitution. In this case the Defendant was a Negro. He was tried in Marlboro County, South Carolina and convicted of receiving stolen goods: to-wit: five (5) automobile tires. The question of the systematic and purposeful exclusion of Negroes from the jury was not raised at the trial; but it is an undeniable fact that Negroes have been systematically and purposefully excluded from jury duty in this particular county since the days of the war between the states. The question was raised on appeal to the South Carolina Supreme Court and was listed among the Exceptions argued before that Court. It was impossible for this Defendant to have received the fair and impartial trial and the equal protection of the law to which he was entitled under the Sixth and Fourteenth Amendments to the United States Constitution.

In this case the police officers went upon the premises of the Defendant under authority of a Federal search warrant to seek out illegal whiskey. While there they went into the Defendant's barn and confiscated certain cans of paint and five (5) automobile tires which were used in the trial of the Defendant in the State Court for receiving stolen goods. While the cans of paint were excluded from the evidence during the course of the trial, they were seen by the jury and examination was permitted with regard to the paint which, it was argued upon appeal, was to the prejudice of the Defendant. The Defendant was convicted of receiving the five (5) automobile tires, obtained by the use of the Federal search warrant; and the tires were of course admitted into the evidence against the Defendant. Article 1, Section 16 of the Constitution of South Carolina (1895) is clear in its protection of every person against an unlawful search or seizure. The Fourth Amendment to the United States Constitution provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." Thus it seems fundamental that a

search warrant must contain, among other things, a description of the specific property being sought. It is contended that evidence used in the State Court against the Defendant having been obtained by a Federal search warrant which did not meet the Constitutional requirements, then such evidence could not be legally used against the Defendant. It seems well established that evidence obtained by an improper search or seizure cannot be used in a State Criminal trial. It is further submitted that the extent of the authority of the Federal search warrant used in this case was limited to the search for illegal whiskey and that to use it against the Defendant to acquire evidence for a State Criminal trial was improper and would bar such evidence from use by the State Court. Thus it is submitted that the use of a Federal search warrant for illegal whiskey in this manner was an unreasonable search and seizure and in violation not only of the State Constitution, but of the Defendant's rights under the Fourth Amendment to the United States Constitution.

APPENDIX

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE — *Respondent*

v.

SAM BASS — *Appellant*

APPEAL FROM MARLBORO COUNTY

J. A. Spruill, Jr., *Judge*
Case No. 4946
Opinion No. 18045
Filed April 1, 1963

AFFIRMED

John Bolt Culbertson, of Greenville, for Appellant

Solicitor Robert L. Kilgo, of Darlington and Assistant Attorney General, Clarence T. Goolsby, Jr., of Columbia, for Respondent.

TAYLOR, C. J.: The Appellant was tried and convicted in the Court of General Sessions for Marlboro County at the July 1962 term, upon an indictment charging him with receiving stolen goods, the property of the South Carolina Highway Department, knowing the same to have been stolen, of the value of $200.00. At the conclusion of the State's evidence, Appellant moved for a directed verdict and after rendition of the verdict moved for a new trial. Both motions were denied and Appellant was sentenced to serve a period of 30 months at hard labor upon the public works of Marlboro County or a like period in the State Penitentiary. Timely notice of intention to appeal to this Court was given and Appellant presents the following 7 exceptions:

1. That the trial Judge erred in overruling Defendant's motion for a directed verdict of not guilty and in submitting the case to the jury.

2. That the trial Judge erred in overruling Defendant's objection to the admission of the five tires alleged to have been stolen and in permitting the same to be admitted in evidence.

3. That the trial Judge erred in overruling Defendant's objection to testimony relating to certain cans of paint.

4. That the trial Judge erred in overruling Defendant's objection to that portion of the cross-examination of the Defendant relating to five cans of paint.

5. That the five tires involved in this case were found and taken without a legal search warrant.

6. That for many years, Negroes have been systematically excluded from grand jury duty in Marlboro County.

7. That the sentence in the case was harsh, unreasonable and excessive.

The first question is whether there was error on the part of the trial judge in overruling the motion for a directed verdict. At the conclusion of the State's evidence, Appellant made a motion for a directed verdict; however, no grounds were set forth or argument made in support of the motion. The trial judge's refusal to grant a directed verdict or a new trial will not be disturbed where there is evidence to support the verdict. *State* v. *Miller* 223–128, SE 74(2), *State* v. *Prince* S. C. 240–96, SE 124 (2) 778.

The duty of the Court when considering a motion for a directed verdict is not to pass upon the weight of the evidence but to determine its sufficiency to support the verdict. Where there is any evidence on which the jury may justifiably find the existence or nonexistence of material facts in issue or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury. *State* v. *Rush* SC 129–43; SE 122–765; *State* v. *Gellis* SC 158–471, SE 155–849. *State* v. *Prince*, SC 165–115, SE 162–777; and the evidence must be considered in the light most favorable to the State. *State* v. *Brown*, SC 205–514, SE 32 (2) 825. *State* v. *Thomas*, SC 222–484, SE 73(2) 722. *State* v. *Robinson*, SC 223–314, SE 75 (2) 465.

On April 4, 1962, several Federal, State and County Agents conducted a search of Appellant's farm, including the house and the barn, in Marlboro County. Behind a false wall with a secret door in the barn were found, in addition to several other articles, 5 new tires and 5 gallon cans of paint. There was testimony that the tires were size 825 X 20 Mohawk Super-

chief tires and were the same size and make as those previously taken from the South Carolina State Highway Department on two occasions in July, 1961 and March, 1962. One of the tires had the letters "SCHD" stenciled thereon, a method of identification used by the South Carolina State Highway Department. The other 4 tires had portions of this stencil marking remaining, the rest having been "buffed off."

Under the circumstances, we are of the opinion that the court was fully warranted in refusing the motion and in submitting the case to the jury as to the tires.

Appellant's second exception asserts that it was error to admit into evidence the 5 tires, contending that there was no evidence showing the tires to have been previously stolen. This exception is closely related to Exception 1 and was disposed of by what we have heretofore related. Further, Appellant's counsel cross-examined the State's witnesses thereabout without reservation, thereby waiving any objection he had thereto. *State v. Cavers*, SC 236–305, SE 114 (2) 401. *State v. Puckett*, SC 237–369, SE 117 (2) 369.

Appellant's third exception relates to the five (5) gallon cans of paint found behind the false wall and which the indictment charged him with knowingly receiving as stolen goods. The trial judge, after objection, allowed the State the opportunity to lay the proper foundation for the admission of the 5 cans of paint in evidence. When the State was unable to do so, Appellant's counsel made further objection which was sustained, and the jury was admonished to disregard the testimony as to the paint. Since the objection was sustained, and the testimony relative thereto was stricken with instructions to the jury to disregard such testimony, this exception is without merit. *State v. Sharpe*, SC 138–58, SE 135–636; *State v. McMillian*, SC 144–121, SE 142–236; *State v. Blackwell*, SC 220–342, SE 67 (2) 684.

Appellant next contends error in overruling his objection to that portion for the cross-examination of the Defendant relating to the 5 cans of paint which the Court refused to admit into evidence. In overruling Appellant's objection, the trial judge pointed out that the Defendant was no longer charged with receiving stolen paint and that cross-examination

thereon was permitted only for the purpose of testing the credibility of the witness.

It is well settled that the extent of the cross-examination of a witness is within the trial judge's discretion and a wide latitude is allowed to test the witness' memory, bias, prejudice, interest, or credibility. In *State v. Maxy*, SC 218–106, SE 62 (2) 100, the rule is stated as follows: The general range and extent of cross-examination is with the discretion of the trial judge, subject to the limitation that it must relate to matters pertinent to the issues, or to specific acts which tend to discredit the witness or impeach his moral character. The discretion of the trial court in allowing cross-examination is not subject to review except in cases of manifest abuse or injustice.

Appellant on direct examination admitted possession of the paint and testified as to how he came into its possession. Cross-examination relative thereto was not an abuse of discretion but entirely proper.

Appellant also alleges that the sentence imposed was harsh, unreasonable and excessive. This Court has no jurisdiction to correct a sentence alleged to be excessive when it is within the limits prescribed by law. The 30 months sentence was imposed pursuant to Section 17-553 Code of Laws of South Carolina, 1962 and being within the limits of its provisions, this Court is without authority to change the sentence. *State v. King*, SE 222–108, SE 71 (2) 793; *State v. Fleming*, SC 228–129, SE 89 (2) 104; *State v. Conally*, 227–307, SE 88 (2) 591.

The question sought to be raised by Exceptions 5 and 6 were not presented to or passed upon in the lower Court and will not be considered here for the first time on appeal. *State v. Burnett*, SC 226–421, SE 85 (2) 744. Further, there is evidence tending to substantiate Appellant's contention as to Exception 6. See *State v. Waitus*, SC 224–12, SE 77 (2) 256; *State v. Worthy*, SC 239–149, SE 123 (2) 835.

For the foregoing reasons, we are of the opinion that the judgement and sentence appealed from should be affirmed and IT IS SO ORDERED. AFFIRMED.

MOSS, LEWIS, BUSSEY, AND BRAILSFORD, JJ., Concur.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE — *Respondent*

v.

SAM BASS — *Appellant*

APPEAL FROM MARLBORO COUNTY
J. A. Spruill, Jr., *Judge*

Case No. 4946
Opinion No. 18045
Filed April 1, 1963

John Bolt Culbertson, of Greenville, South Carolina, for Appellant

Solicitor Robert L. Kilgo, of Darlington, South Carolina and Assistant Attorney General Clarence T. Goolsby, Jr., of Columbia, South Carolina, for Respondent.

PETITION FOR REHEARING

TO THE HONORABLE SUPREME COURT OF SOUTH CAROLINA

The undersigned Attorney for Sam Bass, Appellant, does hereby respectfully request a rehearing in the above-entitled case. I respectfully submit that the Court overlooked or misapprehended certain facts and rules of law.

I

The Court may have misapprehended or overlooked certain phases of the question as to whether the trial judge erred in overruling Appellant's motion for a directed verdict. It is submitted that, since the five (5) tires were never proven to be the ones taken from the Highway Department, there was no evidence to support the verdict. Thus there was no evidence at all from which the jury could justifiably find the material facts in issue or from which any other conclusion could be drawn than the innocence of the Appellant.

II

The Court apparently misapprehended or overlooked the fact that the five (5) cans of paint, which were later excluded, were exhibited in the Courtroom and in the presence of the jury and that extensive testimony was taken before their exclusion by the trial Judge. It is submitted that such a display, coupled with lengthy testimony, could only form an indelible picture in the minds of the jurors to the prejudice of the Appellant. Such a picture could hardly be erased by the simple admonition of the trial Judge that the jury should disregard such testimony. The State obviously knew of its inability to lay the proper foundation for the admission of the paint, and thus its purpose could only have been to create such prejudice.

III

The Court stated that the extent of the cross-examination of a witness is within the trial Judge's discretion and a wide latitude is allowed to test the witness' memory, bias, prejudice, interest, or credibility. It is submitted that the Court apparently misapprehended or overlooked the fact that the questions on cross-examination regarding the paint could hardly serve this purpose. It is further submitted that the extent of cross-examination, of the Judge's discretion, and of the latitude allowed is subject to the limitation that the questions must relate to issues or specific acts which tend to discredit the witness or impeach his moral character. It is difficult to see how this particular cross-examination could serve this purpose of so testing. The importance of the objection is strengthened by the previous exclusion of the cans of paint, which were displayed to the jury, and about which extensive testimony was taken. Rather than to test the credibility of the Appellant, this cross-examination could only keep alive a prejudice created in the minds of the jurors and one which the trial Judge had already admonished them to disregard.

IN CONCLUSION

WHEREFORE, I earnestly request that this Honorable Court grant this humble Petition for Re Hearing.

JOHN BOLT CULBERTSON
Greenville, South Carolina
Attorney for Appellant

April 9, 1963

CERTIFICATE

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

I, Harley L. Wooten, Attorney of the Greenville Bar, do hereby certify that I have examined the grounds in the foregoing Petition, that in my opinion there is merit in said grounds and that this Petition is not being brought for the purpose of delay.

HARLEY L. WOOTEN

Greenville, South Carolina
April 9, 1963.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE — *Respondent*

v.

SAM BASS — *Appellant*

APPEAL FROM MARLBORO COUNTY
J. A. Spruill, Jr., *Judge*

Case No. 4946
Opinion No. 18045
Filed April 1, 1963

John Bolt Culbertson, of Greenville, South Carolina, for Appellant

Solicitor Robert L. Kilgo, of Darlington, South Carolina and Assistant Attorney General Clarence T. Goolsby, Jr., of Columbia, South Carolina, for Appellant

"Petition denied."

s/	C. A. Taylor	C. J.
s/	Joseph R. Moss	A. J.
s/	J. Woodrow Lewis	A. J.
s/	Thos. P. Bussey	A. J.
s/	J. M. Brailsford	A. J.

Columbia, South Carolina
April 19, 1963

IN THE
SUPREME COURT OF THE UNITED STATES

SAM BASS, *Petitioner*,

v.

STATE OF SOUTH CAROLINA, *Respondent*

PROOF OF SERVICE

I, Clarence T. Goolsby, Jr., Assistant Attorney General, of the State of South Carolina, hereby acknowledge receipt of a copy of the foregoing Petition for Writ of Certiorari, this day of , 1963.

I, Robert L. Kilgo, Solicitor of the Fourth Judicial Circuit, of the State of South Carolina, hereby acknowledge receipt of a copy of the foregoing Petition for Writ of Certiorari, this day of , 1963.